

**ANDREA BUDLONG, PLAINTIFF-APPELLANT, VS. JUAN PONDOC,
FABIO PONDOC, APOLINARIA PONDOC, BENEDICTA PONDOC,
FEUCIDAD PONDOC AND FRANCISCO GARROTE,
DEFENDANTS-APPELLEES.**

G.R. No. L-27702. September 09, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

This is an action for the partition of Lot No. 5447, with an area of 12.524 square meters, situated at Barrio Ubujan, Tagbilaran City. Bohol, assessed at six hundred pesos in 1965.

On October 27, 1934 the sisters Isabela Pondoc and Crispina Pondoc donated to Andrea Budlong in a notarial instrument their two-thirds share in the said lot in consideration of the donee's personal services to the donors. Andrea accepted the donation in the same instrument. It was noted in the deed that the Court of First Instance of Bohol had rendered a decision dated November 28, 1933 regarding the said lot.

The deed contains the statement "that by virtue hereof, the said Andrea Budlong is hereby vested with full ownership and property of the lot in question." It was acknowledged before Genaro Visarra, the mayor of Tagbilaran, an ex officio notary.

Two years after the execution of the donation, or on October 27, 1936, Original Certificate of Title No. 4718 was issued for the said lot. The title shows that the lot is owned by the following co-owners: Crispina Pondoc, 1/3; Isabela Pondoc, 1/3; Francisco Garrote, 1/6, and Isabel Garrote-Pondoc, 1/6.

Apparently, the donee, Andrea Budlong, did not intervene in the cadastral proceeding. She was not substituted for the donors in that proceeding maybe because the hearing had already been terminated when the donation was made to her. However, the owner's duplicate of OCT No. 4718 was in the possession of Andrea. Sometime in January, 1965, Juan Pondoc talked with Andrea about the sale of the lot. He got the said title from Andrea. When the projected sale did not go through, Juan did not return the title to her.

Isabela Pondoc and Crispina Pondoc died without any descendants in 1935 and 1937, respectively (p. 14, Appellees' Brief)- Francisco Garrote, an alleged brother of Isabela Pondoc and Crispina Pondoc, left Bohol thirty years before 1966 and had never returned to that province. Isabel Garrote-Pondoc died and was survived by her five children named Juan, Fabio, Apolinaria, Benedicta and Felicidad, all surnamed Pondoc y Garrote.

Presumably, Andrea Budlong has been in possession of the lot. She declared it for tax purposes in her name. She paid the realty taxes thereon from 1936 to 1966. She planted the lot to coconuts, bamboos, bananas and a mango tree.

Early in 1965 Andrea wanted to register the deed of donation. The register of deeds in a letter dated April 1, 1965 asked Juan Pondoc to surrender the owner's duplicate of OCT No. 4718. He did not comply with that request.

On May 11, 1965 Andrea Budlong filed in the Court of First Instance of Bohol an action for the partition of the said lot. She was allowed to sue as a pauper. She filed the action against Francisco Garrote and the five children of Isabel Garrote-Pondoc. Francisco was summoned by publication. He was declared in default.

Juan, Fabio, Apolinaria, Benedicta and Felicidad, all surnamed Pondoc, alleged in their answer that the donation was "fraudulently executed." They relied on OCT No. 4718.

Visarra, the notary, declared in his deposition that the deed of donation was voluntarily executed by the donors.

The trial court dismissed the complaint on the grounds that Andrea Budlong was guilty of laches and that the registration of the lot extinguished her rights under the deed of donation. It opined that she could not ask for the partition of the lot because she does not appear as a co-owner in the title thereof. The court intimated that she could ask for an indemnity from the assurance fund.

From that adverse decision, Andrea appealed to this Court. She stated in her notice of appeal that the lower court's decision is contrary to law. She assailed the trial court's rulings that she is guilty of laches; that the one-year period provided in section 38 of Act No. 496 applies to this case; that it has no jurisdiction to protect her right under the deed of donation, and that she could not demand partition because she was no longer a co-owner of the lot.

The trial court correctly held that the donation is valid. Defendants-appellees' belated contention on appeal that the donation is mortis causa (they did not raise that issue in their answer or in the lower court) is wrong. There is not the slightest indication in the deed that the donation would take effect upon the donors' death. It is indisputably an inter vivos donation.

In the deed it is expressly stipulated that the ownership over the two-thirds proindiviso share of the donors in Lot No. 5447 was transferred to the donee. That notarial deed amounted to a transfer of the ownership and possession of the lot because the execution of a public instrument of conveyance is one of the recognized ways by which delivery of lands may be made (Art. 1463, old Civil Code, now art. 1498; *Ortiz vs. Court of Appeals*, 97 Phil. 46).

We find the appeal to be meritorious. The trial court erred in assuming that the donee ceased to be a co-owner because her name does not appear in OCT No. 4718 which was issued two years after the execution of the deed of donation.

Overlooked by the trial court is the provision of section 70 of Act No. 496 that "registered land, and ownership therein, shall in all respects be subject to the same burdens and incidents attached by law to unregistered land," and that nothing in Act No. 496 "shall in any way be construed" "to change the laws of descent, or the rights of partition between coparceners, joint tenants and other cotenants" "or to change or affect in any other way any other rights or liabilities created by law and applicable to unregistered land, except as otherwise expressly provided in this Act or in the amendments hereof." Section 70 is quoted below:

"LEGAL INCIDENTS OF REGISTRATION LAND.

"SEC. 70. Registered land, and ownership therein, shall in all respects be subject to the same burdens and incidents attached by law to unregistered land. Nothing contained in this Act shall in any way be construed to relieve registered land or the owners thereof from any rights incident to the relation of husband and wife, or from liability to attachment on mesne process or levy on execution, or from liability to any lien of any description established by law on land and the buildings thereon, or the interest of the owner in such land or buildings, or to change the laws of descent, or the rights of partition between coparcener, joint tenants and other cotenants, or the right to take the same by eminent domain, or to relieve such land from liability to be appropriated in any lawful manner for the payment of debts, or to change or affect in any other way any other

rights or liabilities created by law and applicable to unregistered land, except as otherwise expressly provided in this Act or in the amendments hereof."

For clarity, the rules in section 70 may be restated as follows:

1. Registered land is subject to the same legal burdens and incidents as unregistered land and, therefore, like unregistered land, it is subject to attachment and execution for the payment of debts. The rights and liabilities, which are created by law and are made applicable to unregistered land, are applicable to registered land, except as otherwise provided in Act No. 496.
2. The rights arising from the relation of husband and wife are applicable to registered lands.
3. Registered land is subject (a) to any lien of any description established by law on land and the buildings thereon, or the interest of the owner in such land or buildings, (b) to the laws of descent, and (c) to the rights of partition between coparceners, joint tenants, and other cotenants, except as otherwise expressly provided in Act "No. 496. (As to possible conflict between sections 39 and 70 of Act No. 496, see *De Jesus vs. City of Manila*, 29 Phil. 73).

The situation of *Andrea Budlong* is analogous to that of a spouse whose name was not included in the Torrens title when conjugal land was registered in the name of the other spouse. (The spouses are co-owners of the conjugal assets as provided in article 143 of the Civil Code).

Thus, by reason of Section 70, it was held that a parcel of land, which was acquired during the marriage and which was registered under the Torrens system in the name of one spouse, is presumed to be conjugal unless proven otherwise. The registration in the name of one spouse does not preclude the application of the rule that "all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife" (Art. 160, Civil Code, formerly Article 1407; *Flores vs. Flores*, 48 Phil. 288; *Romero de Pram vs. Menzi & Co. and Sheriff of Rizal*, 53 Phil. 51; *Paterno Vda. de Padilla vs. Bibby Vda. de Padilla*, 74 Phil. 377; *Seva vs. Nolan*, 64 Phil. 374).

Section 70 was also applied to a case where the deceased was survived by her legitimate daughter and an acknowledged natural son. Although the eight parcels of land left by the deceased were registered in the name of her natural son, the daughter or her heirs could sue the natural son or his heirs for the reconveyance of two-thirds of the eight parcels, that being the daughter's share in her mother's estate as a legal heir under the old Civil Code. The one-year period in section 38 of Act No. 496 does not apply to that case. (*Dayao vs. Robles*, 74 Phil. 114).

In *Sideco vs. Aznar*, 92 Phil. 952, 961-2, it was held that, by reason of section 70, an application by the widower in a cadastral proceeding, long after the title to a parcel of land was registered in his name in an ordinary land registration proceeding, to have the names of his children included in the title as co-owners, could be granted. The registration did not affect the children's hereditary rights. The children were not held guilty of laches for having failed to secure the issuance of the title in their names jointly with their father. (See *Guevara vs. Guevara*, 74 Phil. 479, 494; *Robles and Martin vs. Lizarraga Hermanos*, 42 Phil. 584; *Gonzalez vs. Banzon*, 51 Phil. 15,20).

Article 403 of the old Civil Code, now Article 497, provides that the assignees of the co-owners may take part in the partition of the common property. And Article 400 of the old Code, now article 494, provides that each co-owner may demand at any time the partition of the common property, a provision which implies that the action to demand partition is imprescriptible or cannot be barred by laches. (See Art. 1965, old Civil Code).

The deed of donation made *Andrea Budlong* a co-owner of Lot No. 5447. She became the successor-in-interest of the donors, *Isabela Pondoc* and *Crispina Pondoc*. The fact that in OCT No. 4718, which was issued subsequent to

the donation, the donors appear to be the co-owners and not Andrea Budlong did not extinguish at all the rights of Andrea as a co-owner.

Section 70 of Act No. 496 is crystal clear. It unmistakably provides that the conversion of unregistered land into registered land does not affect the rights of the co-owners nor the legal rights and liabilities applicable to unregistered land.

That the registration did not wipe out the rights of Andrea, as the successor-in-interest of the donors, is shown by the fact that she remained in possession of the donated lot and that the owner's duplicate of OCT No. 4718 was given to her and was in her custody from 1936 to January, 1965, when she entrusted it to defendant Juan Pondoc because of the plan to sell the lot and dissolve the co-ownership.

The trial court erred in applying to this case Section 38 of Act No. 496 regarding review of the decree of registration on the ground of fraud. This is not a case of fraudulent registration.

Nor is this a case where the rule on laches is applicable. Moreover, the defendants waived that defense because they did not invoke it in their answer (Sec. 2, Rule 9, Rules of Court; 1 Moran's Comments on the Rules of Court, 1970 Edition, p. 263 citing Bergeon vs. Mansour, 9 Fed. Rules Service, p. 61).

In conclusion, we hold that the 1934 donation should be given effect. It was confirmed by plaintiff-appellant's possession of the donated lot, her improvements thereon, her enjoyment of the fruits thereof, and her payment of the realty taxes due thereon for the years 1936 to 1966.

WHEREFORE, the trial court's decision is reversed and set aside. If the parties cannot agree on the partition of the disputed lot, then the trial court should conduct proceedings for the partition thereof in conformity with Rule 69 of the Rules of Court.

Defendant Juan Pondoc is ordered to surrender the owner's duplicate of OCT No. 4718 to the register of deeds of Tagbilaran City within five days from his counsel's receipt of the notice from the clerk of the lower court of the remand of the records of this case from this Court. The register of deeds is directed to register the deed of donation, to cancel OCT No. 4718, and to issue a new transfer certificate of title showing the two-thirds interest of Andrea Budlong in Lot No. 5447. No costs.

SO ORDERED.

Fernando (Chairman), Barredo, Antonio, Concepcion Jr., and Santos, JJ., concur.

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